IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 223 OF 2007

SADASHIV MARUTI MALI, PRESENTLY IN JUDICIAL CUSTODY ... Appellant

Versus

STATE OF GOA THROUGH THE WOMEN'S POLICE STATION, PANAJI-GOA. ... Respondent

Mr. Ryan Menezes, Advocate for the Applicant.

Mr. C. A. Ferreira, Public Prosecutor for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 27th September, 2007

P.C.:-

Heard Mr. Ryan Menezes, learned Counsel on behalf of the Applicant and Mr. C. A. Ferreira, learned Public Prosecutor on behalf of the Respondent.

The Applicant herein was arrested on 14-8-2007 in connection with investigations of Cr. No.5/2007 under Section 376 I.P.C. and under Section 8(2) of the Goa Children's Act, 2003 and since then is in custody. A bail application filed by him came to be rejected by Order of the Children's Court dated 12-9-2007 and as such the Applicant is before this Court, seeking bail.

Learned Counsel on behalf of the Applicant submits that the exhibits have been sent to the CFSL, Hyderabad and their return is likely to take some time, at least six months. Learned Counsel further submits that the victim has already joined her family at Umre, Pandharpur and as such there is no question of the Applicant interfering with the investigations. Learned Counsel further submits that the Officer who filed the complaint had certain differences with the Applicant/Accused who was also working in the same Office.

The learned Children's Court has rejected the application for bail observing that the records of investigations prima facie reveal the involvement of the Applicant in the commission of the offences and also because the nature of the offence is heinous, considering the nature of relationship between the Applicant and the victim.

The facts disclosed from the investigations and the reply filed show that the Applicant's brother's daughter aged 6/7 years came from Umre, Pandharpur to stay with the Applicant's family in the beginning of this monsoon season. As the wife of the Applicant/Accused found that the victim was having difficulty in walking and complained of pain and had marks over her external genital organs, she took her to be examined by Dr. Veena M. N., a Major Doctor attached to Military Hospital, Panaji. It appears that the Applicant/Accused also works as a Civilian for the said Military Hospital. Before the said Dr. Veena M. N. the very wife of the Applicant/Accused suspected the involvement of her husband. After confirming the injuries the said Major Dr. Veena M. N. informed her Commanding Officer who had instructed her to inform the Civil Police and thereafter lodged the complaint. The statement of the victim has also been recorded and in her statement she confirms sexual assault by the Applicant/Accused. She has given details as to how the incident of the assault took place. Her version is sufficiently corroborated by the medical evidence of the said Major Dr. Veena M. N. In other words, there is prima facie involvement of the Applicant in the commission of the offences alleged against him. An offence under Section 8(2) of the Goa Children's Act, 2003, as far as punishment is concerned is now at par with Section 376(1)(f) and which provides for punishment which shall not be less than ten years but which may extend to life and is under the latter Section also liable to fine. It is therefore obvious that the offence prima facie committed by the Applicant/Accused is of a grave nature and the punishment provided for it is severe. The relationship of the Applicant/Accused with the said victim which was almost that of her father makes the said offence yet more serious. When offence prima facie

committed by an accused is grave and punishment provided is severe, the Court is bound to presume that no amount of bail will secure the presence of the accused at the trial. In such a situation, none of the submissions made on behalf of the accused deserve consideration. The record does not even remotely suggest that there were any differences between the accused and Major Dr. Veena M. N.

Application rejected.

N. A. BRITTO, J.

RD.